

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BNK ADVISORY GROUP, INC.	:	
2102 Main Street	:	
Northampton, PA 18067	:	
Plaintiff	:	
vs.	:	
	:	CIVIL ACTION NO. 02-CV-3221
SUNTRUST EQUITABLE SECURITIES	:	
CORPORATION	:	
303 Peachtree Street	:	JURY TRIAL DEMANDED
Atlanta, GA 30308-3201	:	
Defendant	:	

DEFENDANT SUNTRUST EQUITABLE SECURITIES
CORPORATION'S MOTION TO DISMISS WITH PREJUDICE

Defendant, SunTrust Equitable Securities Corporation (hereinafter SUNTRUST), hereby moves this court pursuant to the Order of this court dated October 11, 2002 for an Order dismissing this matter with prejudice for lack of subject matter jurisdiction under 17 U.S.C. 411(a).

The October 11, 2002 Order of the court (Exhibit A, attached) granted SUNTRUST's motion to dismiss "without prejudice provided that Plaintiff file an amended complaint if it can do so in accordance with §411(9) of the Copyright Act (17 U.S.C. §411(a)) within twenty (20) days of the date of this Order." (Footnote omitted.) Attached as Exhibit B is a copy of the electronic docket entries for this matter obtained from the *CourtLink* on-line docket system, indicating that an amended complaint had not been filed as of November 5, 2002. Furthermore, no amended complaint has been received by counsel for Defendant.

The October 11, 2002 Order further provides: "If no amended complaint is filed, the case will, on motion of defendant, be dismissed with prejudice." In view of the fact that no amended complaint was filed within the twenty (20) days allowed by the court, i.e., October 31, 2002, Defendant hereby moves the court to dismiss this case *with prejudice*.

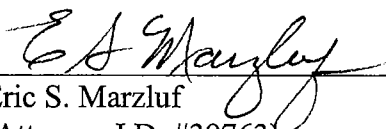
A proposed Order accompanies this Motion.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

November 5, 2002

By: _____



Eric S. Marzluf
(Attorney I.D. #39763)
12th Floor - Seven Penn Center
1635 Market Street
Philadelphia, PA 19103-2212
(215) 567-2010
Attorneys for Defendant
SUNTRUST EQUITABLE SECURITIES
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that the foregoing DEFENDANT SUNTRUST EQUITABLE SECURITIES CORPORATION'S MOTION TO DISMISS WITH PREJUDICE and Proposed ORDER have been served on the Plaintiff, by delivery of one (1) true and correct copy of the same via FEDERAL EXPRESS, prepaid, to:

Charles E. Shoemaker, Jr., Esq.
727-729 North 19th Street
Allentown, PA 18104

this 5th day of November, 2002.



Eric S. Marzluft

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BNK ADVISORY GROUP, INC.

CIVIL ACTION

v.

SUNTRUST EQUITABLE SECURITIES
CORPORATION

NO. 02-3221

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OCT 11 2002

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOV, LTD.

ORDER

AND NOW, this ^{11th} day of October, 2002, upon consideration of the Motion of

Defendant Suntrust Equitable Securities Corporation's ("Defendant") Motion to Dismiss

Pursuant to 12(b)(1) ("Motion") (Docket No. 2), Plaintiff BNK Advisory Group, Inc.'s

("Plaintiff") Answer to Defendant's Motion (Docket No. 3), Defendant's Reply to Plaintiff's

Answer to Defendant's Motion (Docket No. 4), Defendant's Supplemental Reply to Plaintiff's

Answer to Defendant's Motion (Docket No. 5), and all papers filed in support thereof or in

opposition thereto, it is ORDERED that the Motion is GRANTED without prejudice provided

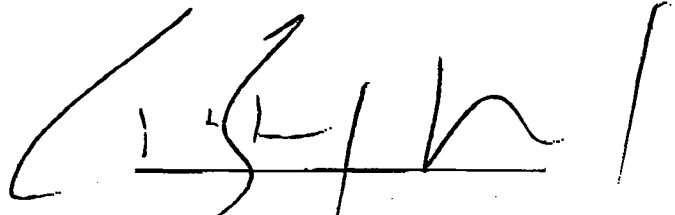
that Plaintiff file an amended complaint, if it can do so in accordance with § 411(a) of the

Copyright Act (17 U.S.C. § 411(a)) within 20 days of the date of this order.¹ If no amended

¹Copyright registration under § 411 is a prerequisite for a district court's jurisdiction, and courts have consistently required pleadings to recite the registration requirements. See 17 U.S.C. § 411(a) ("no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title"); See Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 121 (1989) (referring in its procedural history to the fact that the district court dismissed the complaint with leave to refile based on a lack of subject matter jurisdiction in part due to the complaint's failure to specify the registration number of the copyright); See Tuff-N-Rumble v. Sugarhill Music Publishing Inc., 49 F.Supp.2d

complaint is filed, this case will, on motion of defendant, be dismissed with prejudice.

AND IT IS SO ORDERED.



R. Barclay Surrick, Judge

673, 677 (S.D.N.Y. 1999) (holding that "district courts are without subject matter jurisdiction to hear claims for federal copyright infringement unless a party asserts in his pleadings that he has received an actual certificate of registration or its denial from the Copyright office") (citing Whimsicality, Inc. v. Rubie's Costume Co., Inc., 891 F.2d 452, 453 (2d Cir. 1989). Plaintiff's complaint in this case fails to plead that Plaintiff applied for or received a copyright registration for the work in question. If the Plaintiff has registered the material in question, it can cure this defect by filing an amended complaint. We will therefore permit Plaintiff to amend its complaint to comply with §411(a). See McCormick v. Fugerson, Mouse Works, Civ. A. No. 94-3944, 1995 WL 580339, *1 (E.D.Pa. Sept. 28, 1995), aff'd without op. 82 F.3d 405 (3d Cir. 1996) (referring to an earlier order of the court that dismissed the copyright claim without prejudice and with leave to amend on these grounds); See also Douglas v. Kimberly-Clark Corp., Civ. A. No. 92-3394, 1992 WL 189411 (E.D.Pa. July 28, 1992). We note that there appears to be a dispute between the parties regarding whether the registration form submitted in Plaintiff's Answer to Defendant's Motion, is the registration form for the material in question. Plaintiff's amended complaint should provide clarification.

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Online Docket Sheet

US District Court Civil Docket

US District Court for the Eastern District of Pennsylvania
(Philadelphia)

2:02cv3221

BNK Advisory Group, Inc v. Suntrust Equitable Securities Corporation

This docket was retrieved from the court on Tuesday, November 05, 2002

Date Filed: 5/24/2002

Class Code:

Assigned to: Honorable R Barclay Surrick
Referred to:

Closed?: No

Nature of Suit: Copyrights (820)
Cause: Copyright Infringement

Statute: 17:101

Lead Docket: None
Other Docket:

Jury Demand: Defendant

Jurisdiction: Federal Question

Demand Amount: \$0

Litigants

BNK Advisory Group, Inc
PLAINTIFF

Attorneys

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[COR LD NTC]
727-729 N 19TH St
Allentown PA, 18104
USA
610-820-7580 Fax : 610-820-5779 Lead
Attorney

v.

EXHIBIT B

Suntrust Equitable Securities Corporation
DEFENDANT

Eric S Marzluf
[COR LD NTC]
Caesar Rivise Bernstein, Et Al
12TH FL - 7 Penn Ctr 1635 Market St
Philadelphia PA, 19103
USA
215-567-2010 Fax : 215-751-1142 Lead
Attorney

Date	#	Proceeding Text
5/24/2002	--	DEMAND for Trial by Jury by SUNTRUST EQUITABLE SECURITIES CORPORATION . (ti,) (Entered: 05/28/2002)
5/24/2002	<u>1</u>	NOTICE OF REMOVAL by SUNTRUST EQUITABLE SECURITIES CORPORATION from Common Pleas of Northampton County, case number C0048CV2001007091, Certificate of Service. (Filing fee \$ 150 receipt number 791935) (ti,) (Entered: 05/29/2002)
6/10/2002	<u>2</u>	MOTION TO DISMISS PURSUANT TO 12(b)(1), MEMORANDUM, filed by SUNTRUST EQUITABLE SECURITIES CORPORATION [dft], CERTIFICATE OF SERVICE. (ph,) Additional attachment(s) added on 6/12/2002 (ph,). (Entered: 06/11/2002)
6/25/2002	<u>3</u>	RESPONSE by PLAINTIFF BNK ADVISORY GROUP, INC. to DEFENDANT SUNTRUST EQUITABLE SECURITIES CORPORATION'S MOTION TO DISMISS, Memorandum of Law in Opposition, Certificate of Service. (ky,) (Entered: 06/25/2002)
7/3/2002	<u>4</u>	DEFENDANT SUNTRUST EQUITABLE SECURITIES CORPORATION'S Reply to PLAINTIFF BNK ADVISORY GROUP, INC.'S Answer to DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(1), Certificate of Service. (fh) (Entered: 07/08/2002)
10/2/2002	<u>5</u>	Supplemental Reply by DEFENDANT SUNTRUST EQUITABLE SECURITIES CORPORATION to Plaintiff's Answer to Defendant's MOTION TO DISMISS PURSUANT TO RULE 12(b)(1), Certificate of Service. (mbh,) Additional attachment(s) added on 10/3/2002 (mbh,). Modified on 10/3/2002 (mbh,). (Entered: 10/03/2002)
10/7/2002	<u>6</u>	Correction to SUNTRUST EQUITABLE SECURITIES CORPORATION'S supplemental reply to BNK ADVISORY GROUP, INC;S answer to defendant's motion to dismiss pursuant to Rule 12(b)(1), Certificate of service (ph,) (Entered: 10/08/2002)
10/11/2002	<u>7</u>	ORDER THAT DEFENDANT'S MOTION TO DISMISS PURSUANT TO 12(b)(1) IS GRANTED WITHOUT PREJUDICE PROVIDED THAT PLAINTIFF FILE AN AMENDED COMPLAINT WITHIN 20 DAYS OF THE DATE OF THIS ORDER. IF NO AMENDED COMPLAINT IS FILED, THIS CASE WILL, ON MOTION OF DEFENDANT, BE DISMISSED WITH PREJUDICE. SIGNED BY JUDGE R. BARCLAY SURRICK ON 10/11/2002. 10/14/2002 ENTERED AND COPIES FAXED BY CHAMBERS ON 10/11/2002. (mbh,) Additional attachment(s) added on 10/30/2002 (mc,).

(Entered: 10/15/2002)

10/11/2002 -- ***Civil Case Terminated. (kv,) (Entered: 10/18/2002)

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